

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-208767

DATE: April 12, 1983

MATTER OF: Brian McMahon

DIGEST:

1. As a real estate expense incident to a permanent change of station, reimbursement of an owner's title policy for protection of the owner's interest in the property is prohibited under para. 2-6.2d of the Federal Travel Regulations. However, the cost of the policy is reimbursable if it is required to assure marketable title when selling the home or obtaining a loan for its purchase and if the local custom is that sellers or purchasers, as the case may be, buy the policy for such purpose.
2. An employee purchasing a residence at his new duty station is entitled to reimbursement of an owner's title policy required by his bank to protect its security interest in the property when making a loan to finance the purchase, but only if the custom in the local area is that purchasers pay the expense of the policy for this purpose.

Mr. Brian McMahon, an employee of the Internal Revenue Service, was authorized relocation expenses for his transfer from Chicago, Illinois, to New York City. Incident to the transfer, he purchased a home in New Jersey and was required by the bank financing the purchase to buy an owner's title policy.

The Internal Revenue Service, North-Atlantic Region, asks whether Mr. McMahon may be reimbursed for the expense of the owner's title policy.

Although the request was addressed to the Claims Group of our Accounting and Financial Management Division, it appears to be a request for an advance decision of the Comptroller General and is being treated as such by us

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although the voucher and supporting papers were not furnished.

We find that if the employing office determines that it was customary for purchasers of residences in the local area to pay the cost of an owner's title policy in order to obtain financing, Mr. McMahon is apparently entitled to reimbursement.

Regulations governing reimbursement to employees for relocation expenses are issued by the General Services Administration pursuant to delegated authority under 5 U.S.C. § 5724a which authorizes reimbursement of such expenses to the extent considered necessary and appropriate as provided in such regulations.

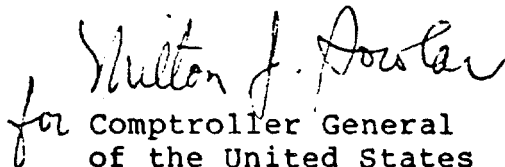
Under regulations in effect prior to October 1, 1982, the cost of a mortgage title policy paid for by the employee purchasing the home is reimbursable, but other types of insurance "such as an owner's title policy * * * are not reimbursable items of expense." Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR) paragraph 2-6.2d. We have held, however, that this provision does not prohibit reimbursement of the cost of an owner's title insurance policy if a lending institution required the policy to protect its security interest in the property when extending a loan for purchase of the home, and it was the custom in the local area that purchasers bear the expense of the policy for such purpose. The expense included a title search in the public records. B-164867, September 4, 1968; B-171041, December 14, 1970; B-176663, February 20, 1973. These decisions did not involve state or local law requiring owner's title insurance to obtain a mortgage on real property, but we have applied them where state insurance regulations provided that title insurance would not be issued for the benefit of the mortgagee alone but must also cover the new owner's interest. Compare Matter of Wilson, B-186579, October 28, 1976; Matter of Rideoutte, B-188716; July 6, 1977. More recently we confirmed the above decisions governing a purchaser's reimbursement of an owner's title policy. See Matter of Ferris, B-172742, November 24, 1980; Matter of Hengstebeck, B-200083, September 29, 1981. Compare Matter of Kale,

55 Comp. Gen. 779 (1976) and Matter of Murphy, B-203634, November 24, 1981, where the general rule against reimbursement for owner's title insurance was applied because the records of the cases did not support findings that the insurance was purchased under the conditions discussed above which would have allowed reimbursement.

Effective October 1, 1982, paragraph 2-6.2d of the FTR was revised to provide that the owner's title insurance cost is reimbursable provided it is a prerequisite to financing or the transfer of property; or the cost of the owner's title insurance is inseparable from the cost of other insurance which is a prerequisite to financing or the transfer of property. This revision is in accord with our decisions discussed above.

While as indicated previously, we were not furnished the supporting documentation in the present case, the administrative report states that a bank required Mr. McMahon to obtain an owner's title policy as a condition to providing financing for the purchase of the residence. Thus, he is entitled to reimbursement if the custom in the local area is that purchasers obtain the policy at their expense for such purpose. The record is silent concerning the local custom. An installation of the employing agency in the locality of the employee's official station should determine the custom in the area with advice from the local office of the Department of Housing and Urban Development. See paragraphs 2-6.3b and c of the FTR.

The agency also asks whether this decision applies retroactively to similar claims. This decision follows established precedent and does not constitute a changed construction of law so as to require only prospective application. See Matter of Lay, 56 Comp. Gen. 561 (1977) and Matter of Cardelli, B-195976, February 8, 1980. Consequently, we would honor such claims if presented to this Office within 6 years of the date the claim arose. See 31 U.S.C. § 71a (now 31 U.S.C. § 3702(b)).


for Comptroller General
of the United States